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experienced in determining this. However, this line of cases establishes definitely that streets, and other like public places, are held in a governmental capacity as an inalienable trust for the benefit of the public.⁷

The other line of cases makes no distinction between property owned in a governmental capacity and that held in a proprietary capacity. On the other hand, they hold distinctly that a municipal corporation is not within the scope of the maxim, and that time runs against it with respect to all property, regardless of the capacity in which it is held, in the same manner and to the same extent as it does against a private corporation or a natural person.⁸ The view expressed in some of the cases in this category, to justify their holding, is that a municipal corporation is not created and powers are not conferred upon it primarily for the benefit of the public at large, but the benefit to, and the interest of, the public is merely incidental; that the corporation does not act as an agent of the state, and, therefore, the maxim does not apply.⁹ These cases are in the minority, and do not seem justifiable on reason and principle.

RIGHTS OF STOCKHOLDER UPON RESCISSION OF CORPORATE DIVIDEND.—A cash dividend entitles the shareholder to a certain sum of money, and is the ordinary way in which he reaps from time to time the fruits of his investment. It divides among the shareholders the accumulated earnings of the corporation, and the latter at once parts with all interest therein.¹ Dividends must issue from funds derived from the business and earnings of the corporation, and cannot issue from the capital stock.² The directors of the corporation have large discretion in deciding when and to what extent the surplus shall be distributed, and a court of equity will not interfere, even though large amounts have accumulated, as long as the directors act in good faith and as it seems to them for the best interest of the corporation.³ This is entirely right; for the management of the corporate affairs has been delegated to the directors by the voluntary act of the majority of the stockholders. They should decide how much is necessary to be retained for the most successful prosecution of the business, and their well laid plans should not be upset by the court every time a dissatisfied shareholder finds a surplus on hand. But where bad faith is shown

⁷ *Supra*, note 6.

⁸ *Town of El Dorado v. Ritchie Grocery Co.*, 84 Ark. 52, 104 S. W. 549; *Flynn v. City of Detroit*, 93 Mich. 590, 53 N. W. 815.

⁹ *City of Fort Smith v. McKibbin*, 41 Ark. 45, 48 Am. Rep. 19.

¹ *DeKoven v. Alsop*, 205 Ill. 309, 68 N. E. 930, 63 L. R. A. 587.

² *DeKoven v. Alsop*, *supra*; *Hyatt v. Allen*, 56 N. Y. 553, 15 Am. Rep. 449; *Wood v. Dummer*, 3 Mason 308, Fed. Cas. 17,944.

³ *Hunter v. Roberts, Thorp & Co.*, 83 Mich. 63, 47 N. W. 131; *Stevens v. United States Steel Corp.*, 68 N. J. E. 373, 59 Atl. 905; *Wolf v. Underwood*, 96 Ala. 329, 11 South. 344.

and dividends are wrongfully withheld, equity will enforce their declaration.⁴

That the corporation is a separate legal entity distinct from the shareholders who make it up is too well established to need citation. The ownership of the entire corporate property is in the corporation and not in the shareholders. The only right which a shareholder has is in a proportionate part of the profits when dividends are declared. Until the declaration of a dividend, the profits are the property of the corporation.⁵ The right to share in the profits vests at the moment the declaration becomes complete, and immediately the relation of debtor and creditor arises between the corporation and stockholder. Therefore, having declared a dividend, the directors have no power to rescind it at a later date.⁶ It seems that the mere vote of the directors is not sufficient to create a vested right in the dividend, and before the corporation becomes the debtor of the shareholder the fact of a declared dividend must have been made public. The contract relation does not spring into being until there has been an offer and acceptance of the dividend. The mere vote of the directors cannot, of course, effect this result, so that until it is communicated to the shareholders the directors have power to rescind it.⁷ The declaration of the dividend having been consummated, the right of the stockholders therein cannot be defeated by an assessment made payable on the same day, and for the sole purpose of defeating the dividend, no other exigency existing which necessitates an assessment.⁸ Since the corporation is the debtor of the shareholders as individuals, even after the declaration of a dividend the specific funds out of which the debtor is to be paid remain the property of the corporation until after its payment. If it selects an agent for this purpose without the concurrence of the creditors, it must assume the risk of any loss resulting therefrom.⁹ Title to the dividend vests in the owner of the stock at the date of its declaration, and not as

⁴ *Griffin v. Griffin Iron Co.*, 61 N. J. E. 269, 48 Atl. 910.

⁵ *Gibbons v. Malon*, 136 U. S. 549; *Goodwin v. Hardy*, 57 Me. 143, 99 Am. Dec. 758.

⁶ *Beers v. Bridgeport Spring Co.*, 42 Conn. 17.

⁷ *Beers v. Bridgeport Spring Co.*, *supra*; *Ford v. Easthampton Rubber Thread Co.*, 158 Mass. 84, 35 Am. St. Rep. 462, 20 L. R. A. 65. This decision was bitterly criticised in *McLaren v. Crescent Planting Co.*, 177 Mo. App. 40, 93 S. W. 819. The court said that the declaration formed the relation of debtor and creditor, that the idea that the debtor being able to discharge his obligation in such a way without the creditors' consent was preposterous. However, the point was unnecessary to the decision of the case. The fundamental distinction in the views of the two courts seems to be in their idea of what is a declaration. The Connecticut court holds that it must be communicated to the shareholders before the relation of debtor and creditor arises, while the Missouri court maintains that the mere vote of the directors *ipso facto* constitutes a declaration.

⁸ *Ex parte Winsor*, Fed. Cas. 17884.

⁹ *King v. P. & H. R. Ry. Co.*, 29 N. J. L. 504.

of the date of payment.¹⁰ When a certain sum is separated from the general assets and deposited in a bank for the payment of a dividend it becomes a trust fund. It must be used for that purpose, even though, by sudden reverses and misfortunes, the corporation becomes insolvent before the dividend has been actually paid.¹¹ Of course the dividend must be a proper one in the first place; for where one is wrongfully declared—there being no surplus from which it can be paid—the corporation can successfully resist a suit to enforce its payment on that ground.¹² And where money has actually been paid out after a declaration, based on the misconception that there were profits, it may be recovered.¹³

A stock dividend is very different from a cash dividend. The latter depletes the treasury of the corporation, but the former neither takes from nor adds to corporate wealth. The interest of each stockholder remains the same after he receives his share of a stock dividend as it was before. It does not distribute property: it merely dilutes the shares. After a stock dividend of fifty per cent., a shareholder who formerly had ten shares each worth a hundred and fifty dollars, has fifteen shares each worth one hundred dollars. Nothing is taken from the corporation or given to the shareholder. In practical effect, a stock dividend is the opposite of a cash dividend; for it declares that funds which might have been distributed among the shareholders never shall be, but shall become a permanent part of the working capital of the corporation.¹⁴ A corporation cannot increase its capital stock without express legislative authority, and if it does so without such authority the issue is void and confers no rights and imposes no liabilities on its purchasers.¹⁵ Power to increase within certain limits may be specifically granted by charter, and an increase in the exercise of this power is, of course, legal. But the issue of the new stock must be in accordance with the mode prescribed.¹⁶ Unless the power to make the increase is specifically given to the directors by charter, it must be exercised by the shareholders themselves. The shareholders must authorize such a fundamental change; for otherwise they would become members of an enterprise which they had never contracted to join.¹⁷

¹⁰ *Degendre v. Kent*, L. R. 4 Eq. 283; *Bright v. Lord*, 51 Ind. 272, 19 Am. Rep. 732.

¹¹ *LeRoy v. Insurance Co.*, 2 Ed. Ch. (N. Y.) 657.

¹² *Slayden v. Coal Co.*, 25 Mo. App. 439.

¹³ *Insurance Co. v. Page*, 17 B. Mon. (Ky.) 412.

¹⁴ *Lancaster Trust Co. v. Mason*, 152 N. C. 660, 68 S. E. 235, 136 Am. St. Rep. 851; *Williams v. Western Union Tel. Co.*, 93 N. Y. 162; *Kaufman v. Charlottesville Woolen Mills*, 93 Va. 673, 25 S. E. 1003.

¹⁵ *Scoville v. Thayer*, 105 U. S. 143; *Kampman v. Tarver*, 87 Tex. 491, 29 S. W. 768; *Cooke v. Marshall*, 196 Pa. 200, 64 L. R. A. 413.

¹⁶ *Winters v. Armstrong*, 37 Fed. 508; *McNulta v. Corn Belt Bank*, 164 Ill. 427, 56 Am. St. Rep. 203.

¹⁷ *Railway Co. v. Allerton*, 18 Wall. 233; *Eidman v. Bowman*, 58 Ill. 444, 11 Am. Rep. 90.

The distribution of shares of another corporation which have been purchased with earnings does not constitute a stock dividend.¹⁸ Where a corporation takes shares of its own stock in payment of a debt, the stock so taken becomes a part of the profits. It represents the returns from an investment, just as would any other property taken in payment of a debt; and, therefore, when a dividend distributing this stock is declared, the stockholders take a vested right in the stock, and the dividend may not thereafter be rescinded by the directors.¹⁹ The question whether a stock dividend is an addition to the corpus of the estate to which the shares belong or income from the invested capital has been before the courts on numerous occasions in cases where stock has been left by will to one person for life with remainder over. The weight of authority seems to hold that while a cash dividend goes to the life tenant as a part of the income, a stock dividend goes to the remainderman; because, as to the shareholder, such a dividend is not really income, but an addition to the source of income, i. e., the invested capital.²⁰ If one sells stock and reserves to himself the next dividend, and the dividend declared be a stock dividend, it nevertheless goes to the buyer.²¹ A stock dividend, declared by the shareholders, may be rescinded at a subsequent meeting, and one who was not present and did not vote at the second meeting cannot demand that his portion of the shares under the dividend be issued to him. In the case of the cash dividend, the declaration makes the dividend complete; and the right to it becomes at once vested in the shareholders. After the declaration of a stock dividend it cannot become complete until certain formalities required by law for the increase of capital stock are complied with and the stock is issued as prescribed by the statute. Until this is done no right is vested in the shareholder.²² For the same reasons, where a script dividend has been issued by the directors, payable in stock, they may rescind it.²³ Stock issued in pursuance of an illegal dividend—declared when there were no profits—is void, and can impose no liability upon its holders to the creditors of the corporation should the corporation become insolvent.²⁴ At all events, no damages are suffered by the shareholders upon the rescission of a stock dividend: since the only practical effect of the issue of such a dividend, from the standpoint of the stockholder, is to increase the evidence of his interest in the capital stock of the corporation.

¹⁸ *Union & New Haven Trust Co. v. Tainer*, 85 Conn. 452, 83 Atl. 697; *Gray v. Hemenway*, 212 Mass. 239, 98 N. E. 789.

¹⁹ *Dock v. Schlichter Jute Cordage Co.*, 167 Pa. St. 370, 31 Atl. 656.

²⁰ *DeKovan v. Alsop*, *supra*; *Gibbons v. Malon*, *supra*. There seems to be irreconcilable conflict on this point. Some of the courts take the position that the time at which the profits were earned is the controlling factor in determining the rights of the parties.

²¹ *Kaufman v. Charlottesville Woolen Mills*, *supra*.

²² *Terry v. Eagle Lock Co.*, 7 Conn. 141.

²³ *Staat v. Biograph Co.*, 236 Fed. 454.

²⁴ *Hollingshead v. Woodard*, 35 Hun. (N. Y.) 410.